



ACDBE: GFE, Monitoring & Enforcement, CUF, Counting

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**Federal Aviation
Administration**

Office Of Civil Rights

*ACHIEVING SAFETY
THROUGH DIVERSITY*





AGENDA

- 1) Good Faith Efforts**
- 2) Monitoring & Enforcement**
- 3) Commercially Useful Function**
- 4) Counting**





Good Faith Efforts

***Good faith efforts* means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.**



Good Faith Efforts, cont'd.

23.25(e)(1)(iii) - Award of concession contract contingent upon obtaining enough ACDBE participation to meet the goal or making a GFE to do so.

23.25(e)(1)(iv) - The administrative procedures applicable to contract goals in part 26, §26.51-53, apply with respect to concession-specific goals.

23.25(f) - Your ACDBE program must require businesses subject to ACDBE goals at the airport (*except car rental companies*) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.



Good Faith Efforts, cont'd.

- Because the administrative procedures applicable to contract goals in part 26, §26.51-53, apply with respect to concession-specific goals:
 - (a) You must meet maximum feasible portion of overall goal by using R/N means of facilitating race-neutral participation. This includes any time DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a contract goal.
 - (b) Race-neutral means participation includes nine (9) areas listed in the Regulation



Good Faith Efforts, cont'd.

1. Arranging solicitations, bid times, etc.
2. Providing assistance with overcoming hurdles to bonding or financing, etc.
3. Providing technical assistance, etc.
4. Carrying out info and communications programs to DBEs and other small businesses, etc.
5. Implementing a supportive services program, etc.
6. Providing services to improve long-term development, etc.
7. Establishing a program to assist new or start-up firms, etc.
8. Ensuring distribution of DBE directory
9. Assisting to develop capability to use emerging technology, etc.





Monitoring and Enforcement

- *Regulatory Requirements*

49 CFR 23.29:

- Implement appropriate mechanisms to ensure compliance by all participants
- Include specific provisions for insertion into concession agreements and management contracts
- Include mechanism to verify that work committed to ACDBEs is done by ACDBEs
- Include written certification of your verification



Monitoring and Enforcement

- Regulatory Requirements, cont'd.

Create **Written** Policies and Procedures for Concession Reviews

- Create a document certifying that site visits are conducted on ACDBE concessions
- Document must detail exactly what was reviewed, by whom, and when
- Airport staff like Concessions Managers are ideal staff candidates to help conduct and process written certification reviews



Monitoring and Enforcement

- Regulatory Requirements, cont'd.

Written Certification of Contract Review

- Contract Review Process
 - ACDBE Subcontract Review

Written Certification of Monitoring

- Concession location reports / forms
- Follow-up reports (if required)



Monitoring & Enforcement

Enforcement Tools

- §23.11 What compliance and enforcement provisions are used under this part?
 - The compliance and enforcement provisions of part 26 (§§26.101 and 26.105 through 26.109) apply to the ACDBE program in the same way that they apply to FAA recipients and programs under part 26.
 - Recipients: formal enforcement actions, suspension or termination of Federal funds
 - Any person who knows of a violation of the Regulation by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel





Monitoring and Enforcement

- *Enforcement Tools*

- **Complaint Investigations**
 - Specific Allegations of Non-compliance
- **The FAA has a number of Enforcement Actions that may apply on a case by case basis.**



Monitoring and Enforcement

- Strategies for Implementation

Project Oversight is a Team Effort!

- Involve other staff members
- Create ACDBE oversight as an essential job function of multiple parties





Monitoring and Enforcement

- *Strategies for Implementation*

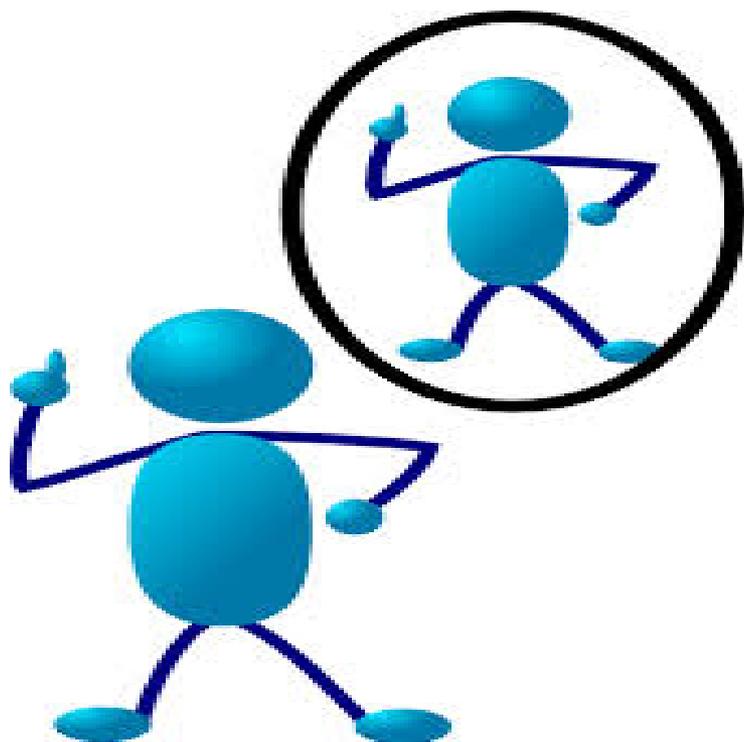
Compliance Reviews

- Airport's Internal Overall Assessment of ACDBE Program Implementation
- Request FAA conduct a compliance review



Monitoring and Enforcement

- Self-Assessment





Self-Assessment

- How are you reviewing initial participation plans and letters of intent (commitments)?
- How are you currently monitoring contracts to ensure they match commitments?
- How do you track and compare commitments?
- How often do you monitor?
- What are your enforcement provisions?



Commercially Useful Function

- §23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?
- You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, §26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions (*wherein DBE must perform at least 30% of contract*).



Counting

1. Ensure ACDBE is performing Commercially Useful Function
2. Count the total dollar value of gross receipts earned under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE
3. If ACDBE enters into agreement with non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE





Counting, cont'd.

4. If ACDBE is a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement
5. Joint Venture ACDBE - count portion of gross receipts equal to distinct, clearly defined portion of work of the concession ACDBE performs with its own forces





Counting, cont'd.

6. Entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, if reasonable
7. Such services may include, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial



Counting, cont'd.

8. 100% of cost of goods obtained from an ACDBE manufacturer [*same meaning as in part 26, §26.55(e)(1)(ii)*]
9. 60% of cost of goods purchased or leased from ACDBE regular dealer [*same meaning as in part 26, §26.55(e)(2)(ii)*]





Counting, cont'd.

10. Goods purchased from ACDBE who is neither manufacturer nor regular dealer
 - Entire fees or commissions for assistance in procurement of goods, if reasonable
11. Fees or transportation charges for delivery of goods required for concession, if reasonable
 - Do not count cost of goods



Counting, cont'd.

12. Only count certified ACDBEs

13. Do not count if ACDBE eligibility removed,
however...

If ACDBE decertified due to a disadvantaged owner not meeting PNW or firm exceeds business size standard during performance of contract, participation may continue to be counted for remainder of term of contract

– BUT NOT EXTENSIONS OR RENEWALS!





Counting, cont'd.

15. Do not count “build-out” costs – 23.55(k)

16. Do not count car rental ACDBE participation toward ACDBE other-than-car rental goal – 23.55(l)



Questions?



Thank You!

